

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34826

STATE OF IDAHO,)	2008 Unpublished Opinion No. 652
)	
Plaintiff-Respondent,)	Filed: September 23, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
STEPHEN R. DUMAN,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Hon. Jeff M. Brudie, District Judge.

Order denying motion for reconsideration, affirmed.

Molly J. Huskey, State Appellate Public Defender; Nicole Owens, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

PER CURIAM

In 1996, Stephen R. Duman was convicted of murder in the second degree, Idaho Code §§ 18-4001, -4003(g). The district court imposed a unified life sentence with twenty years determinate. In 2007, Duman filed an Idaho Criminal Rule 35 motion in which he asserted that his sentence was illegal because his attorney had failed to advise him before sentencing that he could refuse to submit to a psychological evaluation, as the Idaho Supreme Court subsequently held in *Estrada v. State*, 143 Idaho 558, 149 P.3d 833 (2006). The district court denied the motion on September 17, 2007. Duman filed a motion to reconsider, which the district court denied on October 25, 2007. On November 26, 2007, Duman filed a notice of appeal from the order denying his motion for reconsideration.

Duman's motion for reconsideration was properly denied because nothing in the criminal rules authorizes a motion to reconsider the denial of a Rule 35 motion. In fact, such successive motions are prohibited by Rule 35. See *State v. Bottens*, 137 Idaho 730, 732, 52 P.3d 875, 877

(Ct. App. 2002). Further, we may not review the district court's denial of Duman's original Rule 35 motion because the notice of appeal was not timely filed from that order. *See* Idaho Appellate Rule 14(a) (notice of appeal must be filed within forty-two days of the challenged judgment or order). Accordingly, the district court's order denying Duman's motion for reconsideration of the order denying his Rule 35 motion is affirmed.